

REMARKS

Review and reconsideration on the merits are requested.

Claim 1 is amended so as to be specific to the use of at least one inorganic phosphorous compound as the active ingredient. This is a narrowing amendment. Claim 1 is also amended to emphasize the effects of the present invention. See the specification at page 1, first full paragraph.

The prior art considered: U.S. 4,995,898 Nasu et al (Nasu); U.S. 5,206,228 Collins (Collins).

The rejection: Claims 1-5, all claims which were active, were rejected under 35 U.S.C. § 103(a) as being unpatentable over Nasu in view of Collins.

The Examiner's reading of the prior art is set forth in the Action, and will not be repeated here except as necessary for an understanding of Applicants' traversal, which is now presented.

Traversal

Applicants focus on Collins, since the Examiner relies upon Collins as disclosing the use of inorganic phosphorous compounds with added pesticides, the Examiner concluding that it would thus be obvious to combine the Collins inorganic phosphorous compounds with the Nasu imidazole, the Examiner stating:

“Motivation to combine as taught by in order to enhance efficacy and reduce Imidazole amount required.”

Applicants respectfully submit that a careful review of Collins does not support the “motivation to combine” analysis, which the Examiner has presented, for the reasons now set forth.

Collins relates to a method for controlling arthropod pests using inorganic phosphorous acid and mono-esters and salts thereof. In distinction, the present invention is quite different from Collins in relating to a method for curing and/or preventing plant diseases.

In Collins, the inorganic phosphorous compound is used for improving pesticidal activity, and Collins discloses and suggests the use of additional pesticidally active compounds. See, for example, Collins at col. 12, lines 36-49, where quite clearly Collins emphasizes use with other pesticidally-active compounds, not use with fungicides. Accordingly, despite the Examiner's allegations, Applicants respectfully submit, given the overall disclosure in Collins and, of course, Nasu, that there is no motivation to combine Collins with Nasu with any expectation/motivation that the Collins inorganic phosphorous compounds would enhance efficacy or, in fact, reduce the imidazole amount required. Such teaching is, it is respectfully submitted, presented only by a reading of the present specification.

Applicants do note that at col. 12, lines 27-28, Collins makes glancing mention of fungicides, namely, mentioning "fungicides, e.g., benomyl and iprodione".

However, as fact, when the benomyl or iprodione of Collins is combined with inorganic phosphorous acid, no synergistic effect is obtained, contrary to the situation with the present invention where a synergistic effect is obtained by combining the compound of formula (I) of claim 1 herein with an inorganic phosphorous compound.

Supporting their argument, Applicants submit for the Examiner's consideration test results in the form of a DECLARATION UNDER 37 C.F.R. § 1.132.

AMENDMENT UNDER 37 C.F.R. §1.111
U.S. Appln. No. 10/026,700

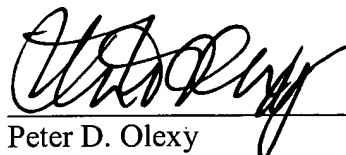
If the Examiner would refer to Table 1 in the DECLARATION, it is believed that the data in Table 1 clearly establish that synergistic effects cannot be obtained by combining the benomyl or iprodione of Collins with an inorganic phosphorous acid.

Accordingly, assuming that there is on the surface motivation to combine Collins with Nasu, the effect of the present invention would not lead to in fact motivation to combine Collins with Nasu.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,


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